No. 513

# In the Supreme Court of the United States

OCTOBER TERM, 1950

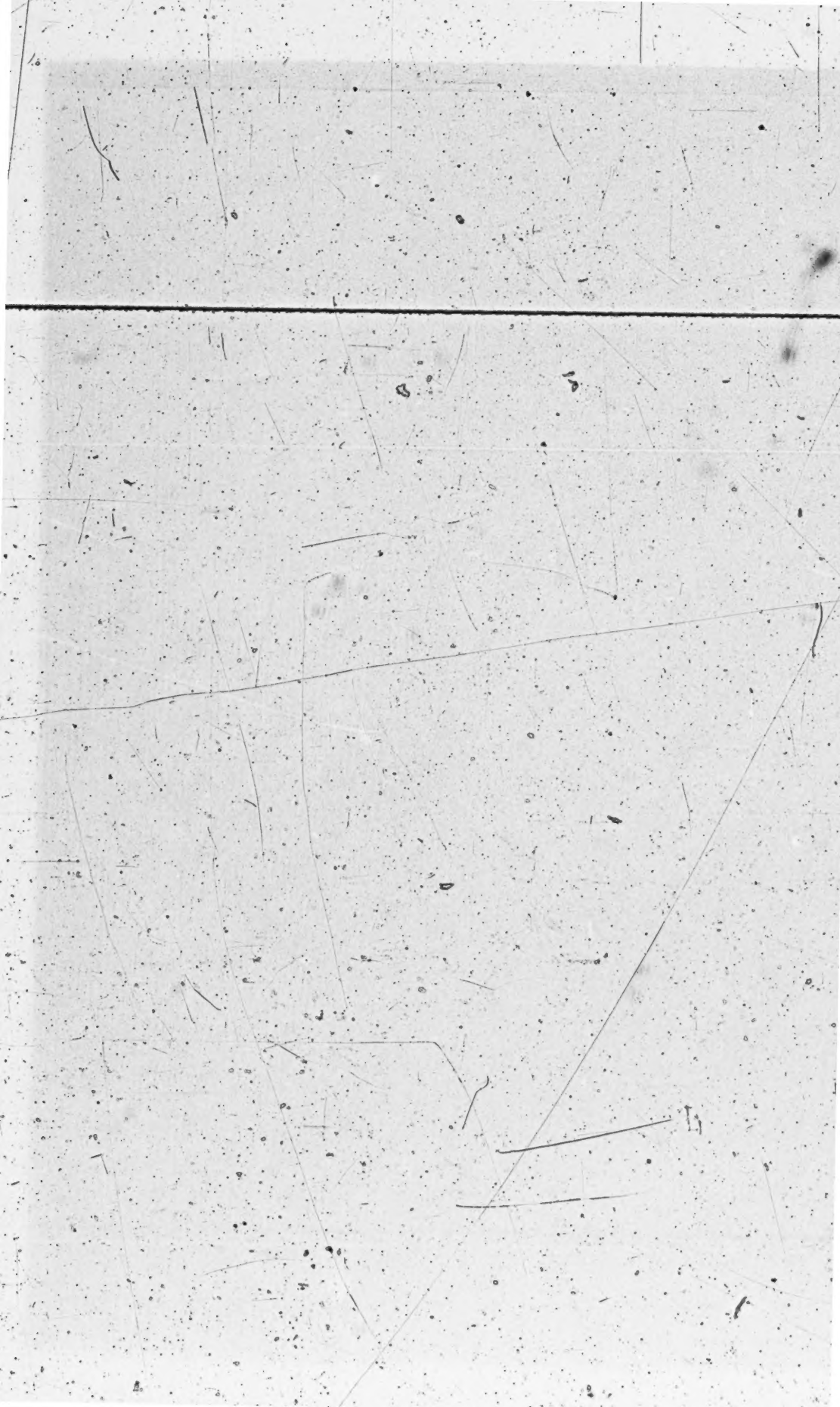
[redacted]

v.

[redacted]

PETITION FOR A WRIT OF CERTIORARI TO THE [redacted]

BRIEF FOR THE UNITED STATES IN OPPOSITION



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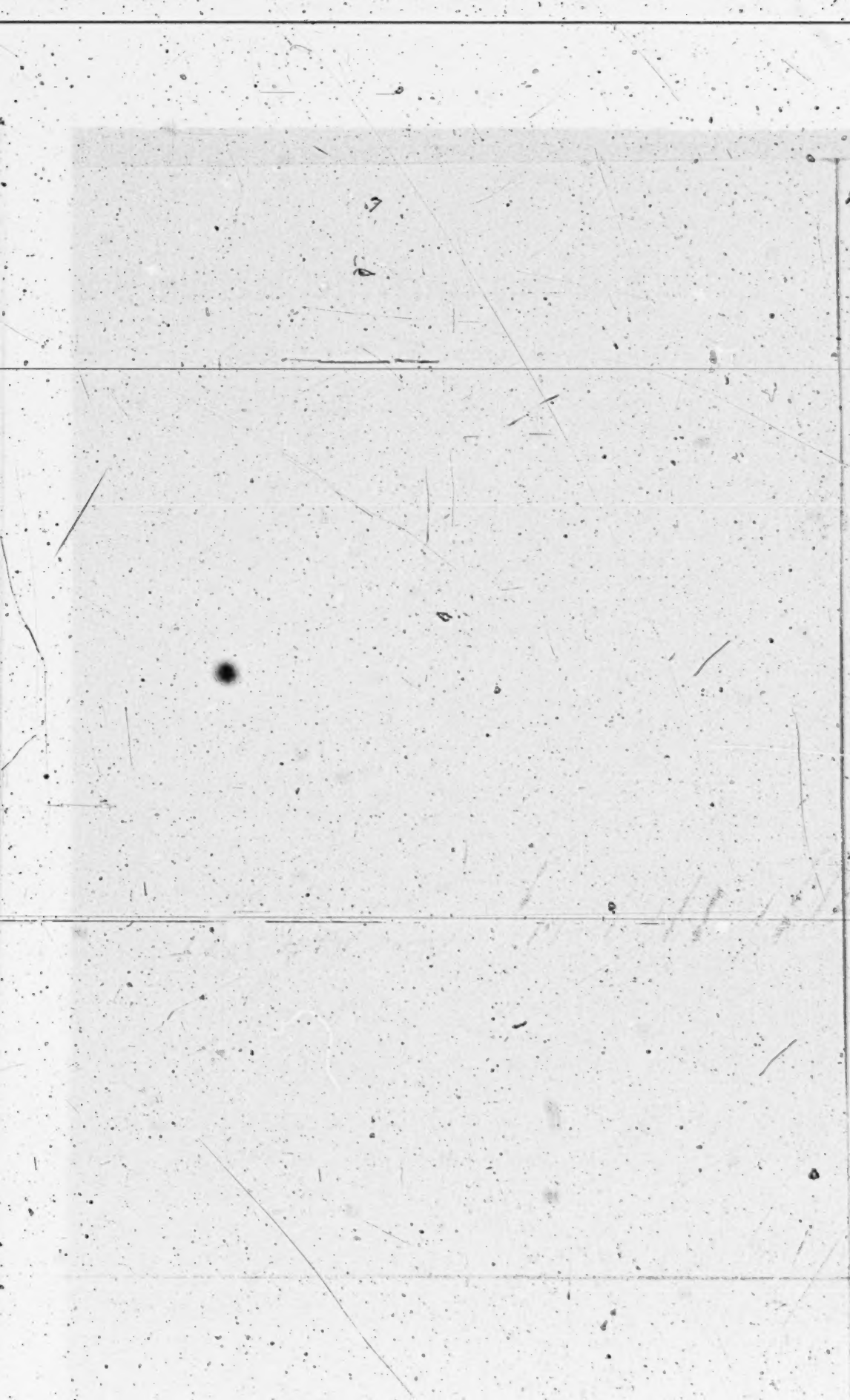

# In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 513

SAMUEL HOFFMAN, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the Court of Appeals (R. 22-29) is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals was entered on December 8, 1950 (R. 30), and a petition for rehearing (R. 30-34) was denied on December 27, 1950 (R. 35). The petition for a writ of

certiorari was filed on January 25, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

## QUESTION PRESENTED

Whether petitioner, a witness before a grand jury investigating violations of federal statutes, could lawfully refuse, on the asserted ground that his answers would tend to incriminate him, to answer questions relating to his occupation, the whereabouts of a subpoenaed acquaintance desired by the Government as a witness, and when he had last seen the latter, without any showing, other than the nature of the questions themselves, that his answers would in fact tend to incriminate him.

## STATEMENT

On September 14, 1950, a grand jury of the Eastern District of Pennsylvania undertook an investigation "concerning frauds upon and conspiracies to defraud the Government of the United States, involving violations of the Customs, narcotics, and internal revenue liquor laws of the United States, as well as violations of the White Slave Traffic Act, perjury, bribery, and other criminal laws of the United States, and conspiracy to commit all such offenses" (R. 2). On October 3, 1950, petitioner, appearing as a witness before this grand jury, refused to answer certain questions on the asserted ground that his answers might tend to incriminate him (R. 2, 5). The questions which he refused to answer appear from the following

excerpt from the transcript of the grand jury proceedings (R. 3, 5-6, italics supplied):

Q. *What do you do now, Mr. Hoffman?*
A. I refuse to answer.

* * * * *

Q. *Have you been doing the same thing you are doing now since the first of the year?*
A. I refuse to answer.
Q. Do you know Mr. William Weisberg?
A. I do.
Q. How long have you known him?
A. Practically twenty years, I guess.
Q. *When did you last see him?*
A. I refuse to answer.
Q. *Have you seen him this week?*
A. I refuse to answer.
Q. Do you know that a subpoena has been issued for Mr. Weisberg?
A. I heard about it in Court.
Q. *Have you talked with him on the telephone this week?*
A. I refuse to answer.
Q. *Do you know where Mr. William Weisberg is now?*
A. I refuse to answer.

Later on the same day, October 3, petitioner and his counsel appeared in open court before the District Court (Ganey, D. J.), and the Government challenged petitioner's claim of privilege (R. 2, 5). The court, after hearing the questions propounded and the answers made thereto, *supra,* and after

hearing argument by petitioner's counsel,[1] found that "there was no real and substantial danger of incrimination to [petitioner] for a Federal offense" and ordered him to reappear before the grand jury and answer the questions which he had declined to answer (R. 5, 2-3).

On the following day, October 4, 1950, petitioner and his counsel again appeared in open court before Judge Ganey. It appears that the judge at that time permitted counsel to renew his argument of the preceding day in support of his claim that petitioner's refusal to answer the questions above referred to was based on a proper claim of privilege. The gist of the argument appears from the following excerpt from the transcript (R. 17-19):

> Mr. Gray [counsel for petitioner]: * * * while Your Honor was, and you always are, sir, extremely patient in listening to the presentation I made yesterday in the matter, I would like to emphasize one fact that I put yesterday to Your Honor, and that is when this man was asked what was his business, I argued to Your Honor that he would have the right to refuse to answer on the ground that it might incriminate him of a Federal offense. I now put the hypothetical question to Your Honor, suppose this man was engaged in counterfeiting?
>
> If he answers the question, he answers it truthfully, and if he does not answer it truth-

[1] The argument made by counsel on October 3 is not contained in the printed record. See pp. 4-7, *infra*, for pertinent extracts from counsel's argument of the following day.

fully, he will be subjected to the penalties of perjury. If he answers it truthfully, he certainly is incriminating himself of having been guilty of an offense under the United States Law.

The Court: What do you say to that, Mr. Goldschein?

* * * * *

Mr. Goldschein [counsel for the Government]: I think, may it please the Court, that before a witness can be given privilege against self-incrimination that the obvious answer to the question must be such that the Court can determine from the question, if the question is answered in the affirmative, that it would incriminate him. Other than that, the witness must give the Court sufficient so that the Court can determine.

The Court: Yes, I think that is right. I ask, what is your job——

Mr. Gray: May I say, before that——

The Court: Excuse me, Mr. Gray. That may be laid in an environment and under such circumstances from which the only inference that can be drawn—I cannot say that he is a counterfeiter—I think I have the right to presume he is engaged in a lawful occupation.

Mr. Gray: My friend does not answer the question and Your Honor does not answer it. Suppose the man is in the counterfeiting business. He is asked the question, What is your business?

He knows he is a counterfeiter; it is his only business; he cannot answer the question be-

cause it would incriminate him. What can he say? He cannot say, "I refuse to answer the question because I am in the counterfeiting business, or I refuse to answer the question because it might incriminate me under the Federal laws; he happens to be a counterfeiter. What are you going to do about that?

The Court: I know, but the whole background—I think it must be laid in a background from which the Court can glean that he is in the counterfeiting business. The mere asking of the question, "What business are you in?"——

Mr. Gray: Well, he is in the counterfeiting business.

The Court:—does not warrant the assumption that he is in the counterfeiting business. He may be in the counterfeiting business. I have to go one step further, don't I, and make the assumption, don't I, that he is in the counterfeiting business or may be——

Mr. Gray: No, not at all. He is actually in the counterfeiting business. He is actually in the business.

The Court: I don't know that.

Mr. Gray: You don't know that, but he knows it in his own mind. How is he going to do more than say, "I refuse to answer on the ground that it may incriminate me"? He cannot explain that he is in the counterfeiting business, and that is why it would incriminate him, because he is then incriminating himself.

The Court: All right, let us take myself. Suppose I were summoned before the Grand

Jury; they say, "What is your business?" I say, I refuse to answer on the ground of self-incrimination.

Mr. Gray: Your illustration——

The Court: I don't know. I don't know what Hoffman does.

Mr. Gray: Your illustration is not very good. It has been broadly published that this man has a police record——

The Court: I don't know it.

Mr. Gray:—that he is not a character that belongs on the bench, or a character that belongs at the bar.

The Court: That I really don't know.

Mr. Gray: Wait; that is no answer to the fact that he may be in the counterfeiting business, and being in the counterfeiting business, if he makes any other explanation than refusal to answer on the ground that it may incriminate him——

The Court: You say it is widely known—has it been in the newspapers that he is in the counterfeiting business?

Mr. Gray: No, sir.

* * * * *

At the conclusion of the foregoing argument, the court again ruled that petitioner was required to answer the questions (R. 19). Petitioner, however, "stated in open Court in the presence of his counsel that he would not obey the order of" the court (R. 3, 6). Accordingly, on the following day, October 5, 1950, on petition of the Government (R. 2-4), and pursuant to Rule 42(a), F. R. Crim.

P., Judge Ganey entered a contempt order (R. 4-6) finding that petitioner had been "guilty of misbehavior in the presence and hearing of" the court (R. 5), *viz.*, "forcible resistance in the presence of the Court to a lawful Order thereof" (R. 6). After reciting in the order the facts as heretofore summarized (R. 5-6), Judge Ganey found petitioner guilty of criminal contempt and sentenced him to five months' imprisonment (R. 6).

On the same day, October 5, 1950, petitioner filed a notice of appeal, and bail pending the appeal was denied by the District Court (R. 1). On the following day, October 6, the entire record of the proceedings in the District Court was sent to the Court of Appeals, where it was docketed on October 11 (R. 20).

On October 20, 1950, petitioner filed in the District Court a "petition for reconsideration of allowance of bail pending appeal" (R. 1, 7-8). Attached to this petition as an exhibit was an affidavit (R. 9-10) executed by petitioner on the preceding day. In this affidavit, petitioner called the court's attention to what he described as certain "public facts" (R. 10) concerning the grand jury investigation and his connection therewith, to wit: that the "investigation was stated, in the charge of the Court to the Grand Jury, to cover 'the gamut of all crimes covered by federal statute' "; that petitioner had "been publicly charged with being a known underworld character, and a racketeer with a twenty year police record, including a prison

sentence on a narcotics charge"; that, "while waiting to testify before the Grand Jury, [he] was photographed with one Joseph N. Bransky, head of the Philadelphia office of the United States Bureau of Narcotics"; and that he "was questioned concerning the whereabouts of a witness [Weisberg] who had not been served with a subpoena and for whom a bench warrant was sought by the Government prosecutor" (R. 9). In support of these averments as to the existence of such "public facts," petitioner attached, as appendices to his affidavit, several news items (including the photograph referred to) which had appeared in one or more Philadelphia newspapers over a period of several weeks (R. 11-15). Petitioner further averred in his affidavit that he had "assumed when he refused to answer the questions involved before the Grand Jury, that both it and the Court were cognizant of, and took into consideration, the [foregoing] facts on which he based his refusals to answer" (R. 9); that he had "since been advised, after his commitment, that the Court did not consider any of said facts upon which he relied and, on the contrary, the Court considered only the bare record"—i.e., simply the questions themselves which he had refused to answer (R. 9, 8); and that "on the basis of the above public facts as well as the facts within his own personal knowledge, * * * he had a real fear that the answers to the questions asked by the Grand Jury would incriminate him of a federal offense" (R. 10).

On October 23, 1950, following a hearing in the District Court, petitioner's motion for reconsideration of the order refusing bail was granted, and he was ordered released on $10,000 bail pending appeal (R. 1, 20). On the following day, October 24, petitioner filed in the Court of Appeals what he described as a "Supplemental Record," consisting of the above-mentioned "petition for reconsideration of allowance of bail pending appeal," the supporting affidavit, and the appendices thereto, consisting of the news items (R. 20-21).

On November 3, 1950, the Government filed in the Court of Appeals a motion to strike this "Supplemental Record" from the record on appeal (R. 20-21), on the ground that the "Supplemental Record" was "not offered nor considered by the District Court in the consideration of the merits of the cause, and was considered by the Court below for only one purpose, namely, bail pending appeal, and after the appeal had been taken and after the entire record had been filed in this Court" (R. 21). On December 8, 1950, the motion to strike was granted by the Court of Appeals (R. 21), which also, on the same day, affirmed the contempt conviction (R. 30).

The Court of Appeals' decision granting the Government's motion to strike the so-called "Supplemental Record" as not properly a part of the record on appeal was unanimous (R. 21, 28). However, the judgment of affirmance was by a divided vote (R. 28-29). A majority of the court (Good-

rich and Kalodner, JJ.) were of the view that petitioner's assertion of the privilege against self-incrimination had been unwarranted with respect to all the questions which he had refused to answer (R. 25-26, 29). Judge Hastie, who wrote the single opinion of the court, agreed with the majority that petitioner's invocation of privilege had been improper with respect to one of the two groups of questions to which he had refused answers, *viz.*, those relating to the whereabouts of Weisberg and when petitioner had last seen him (R. 25-26). Speaking for the whole court, Judge Hastie observed with respect to those questions (*ibid.*):

> We do not think appellant's admission that he had seen Weisberg within the week, or had talked to him within the week, or that he knew where he was, or a statement when he last saw him, could come dangerously close to involving him in a federal offense. We cannot see that any answer to this would be likely to differentiate appellant at all or in any significant way from a considerable number of blameless people. It was suggested that he would perhaps be subject to punishment for obstructing justice, pursuant to Sections 371 or 1501 of the Criminal Code.[2] The sole basis for this claim is the

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[2] 18 U. S. C. 371 is the general conspiracy statute. 18 U. S. C. 1501 provides:

"Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States commissioner; or

> fact, widely publicized, and known to the witness that a subpoena had been issued but not served requiring Weisberg to appear before this grand jury. However, the relationship between possible admissions in answer to the questions asked appellant and the proscription of those sections would need to be much closer for us to conclude that there was real danger in answering. * * *.

However, Judge Hastie was of the view that petitioner was justified in asserting his privilege with respect to the other group of questions, *viz.*, those pertaining to his occupation (R. 28-29). He explained the basis of his conclusion in this respect as follows (*ibid.*):

> The court in this case knew the setting of the controversy. It was a grand jury investigation of racketeering and federal crime in the vicinity. The court should have adverted to the fact of common knowledge that there exists a class of persons who live by activity prohibited by federal criminal laws and that some of these persons would be summoned as witnesses in this grand jury investigation. These considerations indicate a sufficient likelihood of good faith in the claim of privilege to sustain it.

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"Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

"Shall, except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both."

The majority's views with respect to this group of questions were explained by Judge Hastie as follows (R. 29):

> It [the majority] believes that the subject-matter of the grand jury's investigation gives no notice to the trial judge of the quality of any particular witness. Many kinds of witnesses come before grand juries and there is no reason for the judge to believe, in the absence of evidence, that any particular witness is so connected with underworld activities that a statement of his occupation will tend to incriminate him. The majority thinks that the witness here failed to give the judge any information which would allow the latter to rule intelligently on the claim of privilege for the witness simply refused to say anything and gave no facts to show why he refused to say anything. Since the judge is and the witness is not the person who is to determine whether the claim of privilege is to be allowed, the majority concludes that the trial judge was right in saying that the witness had shown nothing which entitled him to the privilege which he claimed.[3]

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[3] If, however, at the hearing in the District Court on the question of the propriety of his claim of privilege, petitioner had given the district judge the information which he subsequently supplied in connection with his "petition for reconsideration of allowance of bail pending appeal" (see pp. 8-9, *supra*), the district judge would have been required, the majority thought, to sustain petitioner's claim of privilege with respect to the questions relating to his occupation. The opinion states (R. 28): "Subsequently [i.e., after petitioner's conviction and the initial refusal of bail], on motion for reconsideration o. the matter of bail, the applicant made allegations with respect to his reputation as a racketeer and notorious

ARGUMENT

1. It is well settled that the constitutional protection against self-incrimination "is confined to real danger and does not extend to remote possibilities out of the ordinary course of law." *Heike* v. *United States*, 227 U.S. 131, 144; *Mason* v. *United States*, 244 U.S. 362, 365; *Brown* v. *Walker*, 161 U.S. 591, 599-600. It is equally well settled that, where a witness declines to answer a question on the ground that his answer may tend to incriminate him, he is not the sole judge as to whether the supposed danger is real or fancied; it is for the court, in last analysis, to make this decision on the basis of facts and information brought to its attention. *Mason* v. *United States*, *supra*, 244 U.S. at 365-366; *Brown* v. *Walker*, *supra*, 161 U.S. at 599-600; *The Queen* v. *Boyes*, 1 B. & S. 311, 329-330. It is evident that the question "What is your occupation?" is colorless on its face; consequently, a witness who claims that to answer the question will tend to incriminate him must supply the judge before whom he asserts his privilege with sufficient facts and information to enable him to per-

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underworld figure in Philadelphia, and to newspaper articles which tended to support this reputation both generally and by specific allegation of prior conviction under the narcotics laws, together with a picture of appellant with a narcotics official. This, we think, would rather clearly be adequate to establish circumstantially the likelihood that appellant's assertion of fear of incrimination was not mere contumacy." But since "the information offered in support of the bail motion was not before the court when it found appellant in contempt" (*ibid.*), all three members of the court below were in agreement that it could not be considered on the appeal from the conviction.

ceive that, for the particular witness before him, a direct answer to the seemingly innocent and colorless question will indeed be criminatory. The situation confronting the judge in making the decision is, to be sure, somewhat unique in the law, as pointed out in *United States* v. *Weisman*, 111 F. 2d 260, 262 (C.A. 2), since the witness "must prove the criminatory character of what it is his privilege to suppress just because it is criminatory." Hence, "[t]he only practicable solution" to the problem is for the judge "to be content with the door's being set a little ajar" (*ibid.*).

Here, at the hearing before the District Court on the Government's challenge of petitioner's claim of privilege, petitioner gave the court no facts or information whatever in support of his claim that it would be dangerous to him to state the nature of his business. It appears from the transcript of the hearing, pertinent excerpts from which are set forth at pp. 4-7, *supra*, that petitioner's counsel, in arguing to the court that petitioner could properly decline to state his occupation, limited himself to the presentation of a hypothetical situation in which petitioner was assumed to be a counterfeiter. The judge correctly pointed out that the positing of a merely hypothetical case would not do, that there had to be some actual indication or evidence before him that counterfeiting, or other occupation in violation of federal law, was in fact petitioner's occupation be-

fore he could rule that the privilege could be successfully asserted. At the crucial point in the argument, when petitioner's counsel stated that it had "been broadly published that this man has a police record,"[4] the court asked whether it had "been in the newspapers that he is in the counterfeiting business." Upon counsel's concession that it had not been, the matter was dropped.

This being the posture of the case at the time of the hearing on the contempt charges, the court's decision that nothing had been advanced to warrant the assertion of privilege was, we submit, clearly correct. For, as the majority below pointed out, "* * * the subject-matter of the grand jury's investigation gives no notice to the trial judge of the quality of any particular witness. Many kinds of witnesses come before grand juries and there is no reason for the judge to believe, *in the absence of evidence*, that any particular witness is so connected with underworld activities that a statement of his occupation will tend to incriminate him. * * * the witness here failed to give the judge any information which would allow the latter to rule intelligently on the claim of privilege for the witness simply refused to say anything and gave

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[4] Of course, the fact that a witness has a "police record" is not in itself an adequate reason for refusing to state his occupation. It is settled that the danger of self-incrimination, which alone warrants a refusal to answer a question, must relate to incrimination of a federal offense. *United States* v. *Murdock*, 284 U. S. 141, 148; *United States* v. *Murdock*, 290 U. S. 389, 396.

no facts to show why he refused to say anything. Since the judge is and the witness is not the person who is to determine whether the claim of privilege is to be allowed, * * * the trial judge was right in saying that the witness had shown nothing which entitled him to the privilege which he claimed" [italics supplied] (R. 29).[5]

2. Petitioner urges, however, that he did, albeit tardily, eventually bring forward sufficient facts and information to prove that his refusal to state the nature of his business was made in good faith, i.e., that he had a sound fear of incriminating himself if he disclosed his occupation (Pet. 11). He has reference to the newspaper items which he exhibited to the District Court in connection with his renewal of his bail application (see *supra*, pp. 8-9). It was these materials which, in the opinion of all three judges below, would have sufficed, if timely presented, to show that petitioner's

[5] Judge Hastie, dissenting below from these views of the majority, remarked that it is a "fact of common knowledge that there exists a class of persons who live by activity prohibited by federal criminal laws and that some of these persons would be summoned as witnesses in this grand jury investigation"; and he thought that these general considerations in themselves afforded sufficient grounds to warrant the inference that petitioner's claim of privilege had been made in good faith (R. 29). But, even assuming, *arguendo*, that a judge is required to take judicial notice that some witnesses who appear before grand juries investigating violations of federal criminal laws may themselves be violators of those laws, it is obvious that not all witnesses who so appear can be presumed to be violators. And judges confronted with recalcitrant witnesses must be constantly on the alert to guard against attempts by witnesses to use the privilege against *self*-incrimination as a pretext for shielding others. *Brown* v. *Walker*, 161 U. S. 591, 600; *Rogers* v. *United States*, decided February 26, 1951.

assertion of privilege with respect to the questions relating to his occupation had been made in good faith, but which, because not brought forward until after conviction, they unanimously agreed were subject to being stricken from the record on appeal as not forming a proper part of it (*supra*, p. 10, and fn. 3, *supra*, pp. 13-14). Petitioner argues that "since the trial court was furnished with the data prior to the argument of the appeal and since that data admittedly would have made [his] claim of privilege well-founded, * * * at the very least [he] should have been afforded the opportunity to present the facts anew to the trial court" (Pet. 11).[6]

We think that the court below was correct in striking from the record on appeal the "Supplemental Record" containing the newspaper items, since they were not before the District Court at the time of petitioner's conviction, and so could not properly be considered on appeal.[7] We also think that the question of whether or not petitioner should have been permitted to reopen the contempt hearing in the District Court, in order to present for that court's consideration the new data now relied on, was a matter addressed to the sound discretion of the court below, and that there

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[6] Petitioner advanced the same argument to the court below in a petition for rehearing (R. 30-31), which was denied (R. 35).

[7] Cf. Rule 39(a), F. R. Crim. P.; *Edwards* v. *United States*, 312 U. S. 473, 482; *Ray* v. *United States*, 301 U. S. 158, 163-164.

has been no showing that that court's decision denying petitioner this opportunity (see fn. 6, *supra*) was an abuse of discretion. But whether or not we are right in these respects need not, for the reasons which follow, be determined in this case.

We shall assume, *arguendo,* that the production of newspaper articles can in some circumstances suffice to sustain a witness' burden of showing that his answering a given question will tend to incriminate him. Cf. *Kasinowitz* v. *United States,* 181 F. 2d 632, 633 (C.A. 9), certiorari denied, 340 U. S. 920; *United States* v. *Weisman,* 111 F. 2d 260, 262 (C.A. 2). We shall further assume for argument that the court below was correct in concluding that the newspaper items contained in the stricken "Supplemental Record" would have constituted a sufficient showing, if timely advanced, to warrant the sustaining of petitioner's claim of privilege with respect to the questions relating to the nature of his occupation. But it is clear that nothing contained in those items justified petitioner's claim of privilege with respect to the questions relating to his knowledge of the whereabouts of Weisberg, and when he had last seen him. Petitioner states that his "refusal to answer these questions was based on his fear that by so doing he would furnish a 'link in the chain' for a future prosecution for conspiracy to obstruct justice" (Pet. 13). This argument was considered and unanimously rejected by the court below

(R. 25-26; and see pp. 11-12, *supra*, where the court's views on this aspect of the case are set forth *verbatim*). We agree with the court that, even if consideration be given to the news items relating to the fact that a subpoena had been issued, but not served, requiring Weisberg to appear before the grand jury, that fact falls far short of establishing that petitioner's claim of privilege with respect to the "Weisberg" questions should have been sustained. Even taking account of the fact that Weisberg, being desired as a witness, had been subpoenaed but could not be found, there has been no showing (or even suggestion) in the record that petitioner conspired with Weisberg to evade service of the subpoena. A more reasonable explanation of petitioner's desire not to reveal Weisberg's whereabouts, or when he had last seen him, is that he wished to shield Weisberg from interrogation by the Government. This, of course, is not a proper ground for claiming the privilege against self-incrimination. *Rogers* v. *United States*, decided February 26, 1951; *Brown* v. *Walker*, 161 U. S. 591, 600. In any event, it was for petitioner to show that there was some substantial reason why he might incriminate himself by disclosing Weisberg's whereabouts, or the time when he had last seen him, and this he has utterly failed to do.[8]

[8] Petitioner suggests that the validity *vel non* of his claim of privilege with respect to the "Weisberg" questions was rendered moot by the fact that Weisberg subsequently voluntarily appeared as a witness before the grand jury, with the consequence that the Government then no longer needed to

Petitioner's sentence of five months' imprisonment was a general sentence, based upon his refusal to answer all the questions here involved (i.e., the questions relating to his occupation and the "Weisberg" questions). Since, as we have shown, and as the court below unanimously held, his refusal to answer the "Weisberg" questions was without warrant, so far as appears from the record, this general sentence is valid, irrespective of any merit that petitioner's contentions relating to the "occupation" questions may, in the peculiar circumstances here presented, be assumed to have. Cf. *Irving Blau* v. *United States*, 340 U. S. 332, 333, 335; *Pinkerton* v. *United States*, 328 U. S. 640, 641-642, fn. 1; *Hirabayashi* v. *United States*, 320 U. S. 81, 85.

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learn Weisberg's whereabouts from petitioner (Pet. 11-12; see R. 31-32). The argument is plainly specious. Petitioner's contempt was complete upon his refusal, without demonstrated good cause, to answer the questions relating to Weisberg's whereabouts. Hence, even assuming that the sole object of the Government in asking petitioner the "Weisberg" questions was to ascertain his whereabouts in order to serve him with a subpoena, the fact that the Government later located Weisberg, with no assistance from petitioner, or that Weisberg voluntarily presented himself, is manifestly of no consequence.

## CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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